IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.176 OF 2007

M/s. Prime Marketing .. Petitioner.
Vs.
Deetex Poly Yarns Pvt Ltd. .. Respondent.

Ms. Neeta Rajda, for the petitioner.
None for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 26TH JULY, 2007.
P.C.:

1. Heard the learned counsel for the petitioner. None appears for the respondent, though served.

2. The petitioner, vide its Delivery Challan No.956 dated 22.11.2005 sold, supplied and delivered 1500 kgs of Texperse Navy Blue 2 G, 60 Drums to the respondent company, which had accepted the delivery of the said goods. The petitioner raised Invoice for a sum of Rs.2,34,000/-. It appears that despite repeated requests and reminders, the company failed and neglected to pay the amount of Rs.2,34,000/- and in view thereof the petitioner, by their Advocate's notice dated 18.9.2006 under section 434 of the Companies Act, 1956, called upon the company to make payment of the said sum together with interest. The notice was replied by the respondent-company. In paragraph 6 of the reply dated 13.10.2006, the company had stated that the goods sent by the petitioner were not of good quality and the

petitioner had talked to the Manager of the company on 25.2.2006 about the same. It was further stated in paragraph 6 that the petitioner had issued a letter to the company dated 28.2.2006 stating therein to return the goods supplied by the petitioner and accordingly the company had returned the goods to the petitioner and hence question of making any payment with or without interest does not arise. I perused the letter dated 28.2.2006. It is true that the petitioner had so mentioned in the said letter. However, according to the petitioner, the goods were never sent by the company to the petitioner and they used them for its gain. The petitioner had replied the letter dated 13.10.2006 by their letter dated 10.11.2006. In paragraph 4 of the reply, they had categorically denied the contents of paragraph 6 in the letter of the company dated 13.10.2006. They had stated that after receiving the goods the company had used them for its gain and the defence stated in paragraph 6 is after thought and is false and is made out with a sole motive to defraud the petitioner. I perused the entire correspondence exchanged between the parties and all other documents relied upon by the petitioner. The company has not filed reply to the petition. In my opinion, the defence of the respondent company, prima facie, does not appear to be genuine and bonafide. I am satisfied that there

is a debt, due and payable by the company to the petitioner.

3. However, in order to furnish the respondent with an opportunity to avoid the consequences of the admission of the petition for winding up, it would be appropriate to pass a conditional order permitting the respondent to deposit the principal amount of the invoice. Thereupon, the petitioner would be relegated to the remedy of filing a suit for the recovery of its dues together with interest and the amount so deposited would be credited to the account of the suit. Hence, the following order:

(i) Within a period of 3 months from the date of this order, the respondent shall deposit with the Prothonotary & Senior Master of this Court, the amount of Rs.2,34,000/-;

(ii) The petitioner is at liberty to file a suit no the Original Side of this court for the recovery of the price of the goods sold, supplied and delivered. The petitioner would be at liberty to institute a suit for the recovery of its dues within four months of intimation of deposit furnished by counsel for the respondent;

(iii) The amount deposited shall upon the institution of the suit stand transferred to the credit of the account of the suit;

(iv) The amount upon being transferred to the credit of the suit account shall be invested by the Prothonotary & Senior Master in a fixed deposit of a Nationalised Bank. The petitioner will be at liberty to move the court for directions in regard to the money which is deposited;

(v) In the event, that the Respondent fails to deposit the amount as directed, the company petition shall stand admitted. The petitioner to advertise the petition in "Free Press Journal", "Nav Shakti" and also in Maharashtra Government Gazette. The petitioner to deposit Rs.10,000/- with the Prothonotary and Senior Master towards publication charges.

(vi) If no suit is instituted by the petitioner within the period stipulated, the respondent would be at liberty to apply for discharge of the security.

4. The company petition is accordingly disposed of in the above terms.

(D.B.BHOSALE, J.)